

Voting "Not Guilty"

A TOOLKIT ON JURY NULLIFICATION

BEYOND CRIMINAL COURTS

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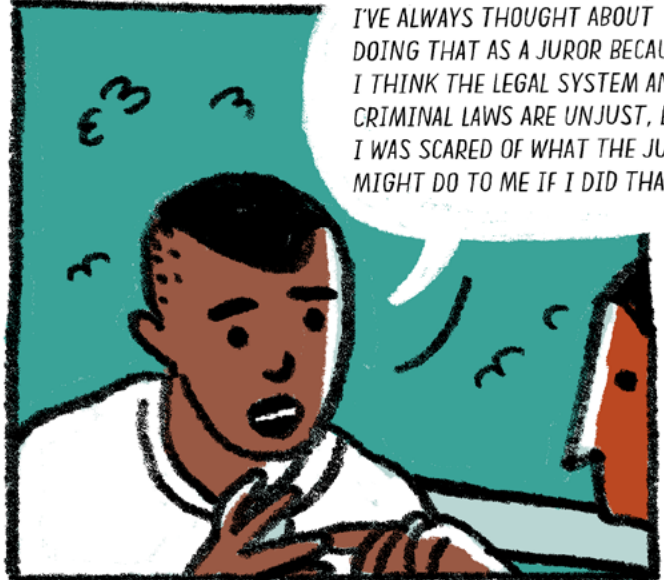
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WAIT, SO YOU MEAN AS A JUROR I CAN JUST REFUSE TO CONVICT SOMEONE?



I'VE ALWAYS THOUGHT ABOUT DOING THAT AS A JUROR BECAUSE I THINK THE LEGAL SYSTEM AND CRIMINAL LAWS ARE UNJUST, BUT I WAS SCARED OF WHAT THE JUDGE MIGHT DO TO ME IF I DID THAT.



YES, YOU CAN SIMPLY CHOOSE TO SAY NOT GUILTY!

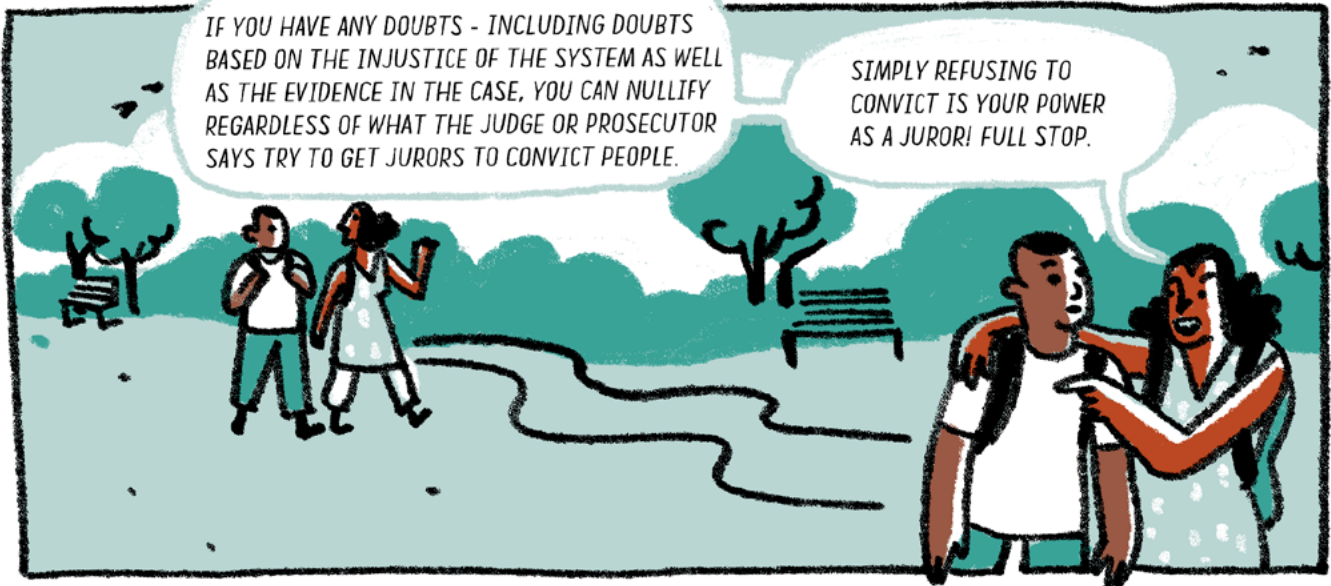


EVEN THOUGH THE JUDGE INSTRUCTED US THAT WE "MUST CONVICT" IF WE FIND THAT THE DEFENDANT COMMITTED THE CRIME BEYOND A REASONABLE DOUBT?



IF YOU HAVE ANY DOUBTS - INCLUDING DOUBTS BASED ON THE INJUSTICE OF THE SYSTEM AS WELL AS THE EVIDENCE IN THE CASE, YOU CAN NULLIFY REGARDLESS OF WHAT THE JUDGE OR PROSECUTOR SAYS TRY TO GET JURORS TO CONVICT PEOPLE.

SIMPLY REFUSING TO CONVICT IS YOUR POWER AS A JUROR! FULL STOP.



Introduction

As abolitionist organizer, and our comrade, T Meyers has said, “if you’re a juror, you have someone’s freedom in your hands.”

It is not unusual for people who are critical of the legal system, especially prison abolitionists, to actively try to avoid jury service and the discomfort of interacting with the criminal legal system. However, **we urge people who care about abolition or decarceration to participate as jurors** because serving as a juror and deciding to say “not guilty” provides a unique and concrete opportunity to put your values into practice. **As a juror, you have the power to single handedly say “not guilty” and get someone out of the grasp of the legal system.** This toolkit offers suggestions on potential actions you can take as a juror to help keep people out of prisons and the carceral system now.

05

One of those actions, and the main focus of this toolkit, is saying “not guilty” as a juror, also known as **jury nullification**. Jury nullification is a term used to describe a situation when jurors decide to acquit a person of criminal charges—say “not guilty”—even though the person on trial could technically be convicted under existing law, based on the “evidence” presented at trial.

While a jury may also acquit because they believe the evidence is not sufficient to prove a person is guilty, jury nullification is generally a broader moral stance against subjecting a person to punishment from the state. Jury nullification is also referred to as **conscientious acquittal** or **juror veto**.

Jury nullification is a concrete, practical way that jurors can assert their values, and express their moral disagreement with unjust laws and punishment, by refusing to convict someone who is being charged with a crime.

Participating as a juror, and engaging in jury nullification, can prevent people from going to jail or prison. Drawing lessons and inspiration from a long lineage of social movements in support of Black liberation and to abolish the prison industrial complex, we offer this toolkit—and the tool of jury nullification—as [one small way among many](#) that individual people can show up for the freedom struggles of people targeted by the legal system.

We believe that jury nullification is an abolitionist tactic, but it is not prison industrial complex abolition in and of itself.

Our goal is not to fight for reforms to make jury nullification easier, but instead a world where policing, prosecutions, and prisons do not exist. However, while existing within the current system, jury nullification is a tool jurors can use now to prevent convictions and incarceration.

For people who are able to get on a jury, principled resistance as a juror is one way to challenge the overwhelming brutality of police, jails, and prisons, and keep people home! This toolkit provides brief history and context of juries and jury nullification, how to engage in trial and grand jury service with an abolitionist perspective, tips on how jury nullification works in practice, and some important considerations about repression for those who decide to nullify. If you remember one thing from this toolkit, it's that you always have the ability as a juror to say "not guilty" and prevent a conviction.



This is an educational resource and is for general information only. The information provided here does not, and is not intended to, constitute legal advice. It is illegal to talk to someone who is already on a jury about anything related to their jury duty. Until the criminal legal system is abolished, being charged with jury tampering (i.e. influencing the composition or decisions of a jury) is still a potential reality. Be aware that anything you say that could be construed as attempting to influence a *particular* juror who is already assigned to a *particular* case could be considered "jury tampering," which is a criminal charge. Courts have ruled that attempting to share general information with prospective jurors (who haven't already been selected to serve on a specific jury in a specific case, also known as "empaneled") is not jury tampering.

To avoid any legal repercussions, do not share this toolkit with anyone who is already actively participating as a juror. Readers should contact their attorney to obtain advice with respect to any particular legal matter.

What is a jury?



Like all aspects of the U.S. legal system, the jury selection process is inherently anti-Black, ableist, ageist, anti-migrant and oppressive in every other way. People who are under 18, who don't have citizenship and/or people who have a felony conviction (except if you've had your civil rights "restored" post-conviction) are usually barred from serving on a jury.¹ Often, people are also barred if the court determines they are not "adequately proficient in English," or if the court determines they have, what the fundamentally ableist courts label a "disqualifying mental or physical condition."² Because the U.S. legal system targets Black, Indigenous and other communities of color, migrants, non-English speakers, disabled people, and young people, those rules already prevent many oppressed and marginalized people—the same people who are targeted by the legal system—from even being eligible to be a juror.

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1 Restoration of Rights Project, Accessed June 26, 2022, <https://ccresourcecenter.org/restoration-2/>.

2 Juror Qualifications, United States Courts, Accessed June 26, 2022, <https://www.uscourts.gov/services-forms/jury-service/juror-qualifications>.

In the criminal trial context, a **trial jury** (also known as a petit jury) is a group of 6 or 12 people whose role is to assess the evidence presented at trial and decide whether a person facing charges is “guilty” or “not guilty” of each charge. An accused person’s right to a jury trial in felony criminal cases is derived from the Sixth Amendment, which specifies, “*In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed...*”³ If the jurors are unable to come to a unanimous decision, the judge may declare a “hung jury” and may declare a mistrial if they determine further deliberations are not likely to achieve a verdict. This means one juror’s principled resistance has a lot of power, whether or not they are able to convince other jurors to vote “not guilty.”

A **grand jury** is a group of 12-23 people whose role it is to assess the evidence presented at the grand jury proceedings and decide whether there was “probable cause” for the state to arrest and charge the person who the state is prosecuting. The [grand jury process precedes the trial jury process](#) in chronological order in a criminal case.

3 U.S. Supreme Court Mandates Juror Unanimity In State Criminal Trials, American Bar Association, July 23, 2020, https://www.americanbar.org/groups/committees/death_penalty_representation/project_press/2020/summer/supreme-court-mandates-unanimity-in-state-criminal-trials/.



If the grand jury finds that there was probable cause, the grand jury issues an indictment, which allows the prosecution to proceed prosecuting the case. When the grand jury declines to issue an indictment, the case is dismissed. Only some cases—usually felony cases, and only in some jurisdictions—have a grand jury process at all.

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You can be called for a criminal trial jury, a grand jury, or a civil jury. The toolkit does not cover **civil juries**, which decide in favor of a defendant or plaintiff, as opposed to voting guilty or not guilty. While the mechanics of civil juries are somewhat different than what's discussed in this toolkit, much of the same framing throughout this toolkit still applies.

History of Juries in the United States

The jury system has a long history of being a tool for discrimination and racial violence. As a result of legal slavery and segregation, Black people were officially excluded from jury service in the U.S. legal system until the late 1800s and the Reconstruction era. In violent opposition to Reconstruction, white supremacist groups engaged in widespread racial violence to intimidate Black people from engaging in social and political life, and attempted to maintain systems of white domination and control of the criminal legal system, which the white property owning class used, and continues to use, as one of the primary tools to enforce racial domination.⁴ All white male juries acquitted white vigilantes responsible for terrorizing and torturing Black Americans. The legal system also explicitly excluded people from jury service based on gender, as only men were legally allowed to serve for much of U.S. history.⁵

4 A History of Discrimination in Jury Selection, Equal Justice Initiative, Accessed June 26, 2022, <https://eji.org/report/race-and-the-jury/a-history-of-discrimination-in-jury-selection/#chapter-1>.

5 Gender Based Jury Exclusion, Equal Justice Initiative, Accessed June 26, 2022, <https://eji.org/report/race-and-the-jury/why-representative-juries-are-necessary/sidebar/gender-based-jury-exclusion/>.

Even since mobilizations against white supremacy have led to changes in the U.S. jury process, racial and gender discrimination in the jury selection process continues through less explicit means. During the jury selection process, also called “voir dire,” prosecutors often exclude jurors based on racist, classist, ableist and sexist stereotypes without any legal consequences.

We offer this toolkit recognizing that while there is a long history of deeply racist, classist, anti-migrant and ableist discrimination against jurors, a jury system with less discrimination against jurors is not “justice.” No less than abolition of the criminal punishment system is necessary.

So long as people are prosecuted, the system will continue to enact violence no matter who is on a jury.

Jury Service with an Abolitionist Perspective

A lot of people, understandably, want nothing to do with jury duty. Many people—particularly Black people, poor people, migrants and other marginalized people—are excluded from jury duty because of the many barriers intentionally put into place. And for those of us who believe the legal system is unjust, our first instinct is to get as far away from it as possible. But if you try to get off the jury, then the person whose trial it is will likely have worse jurors than you, and is less likely to get free. We urge people who care about abolition or decarceration to, if called for jury duty, take the steps necessary to be considered to serve.

Jury Summons & Jury Selection: Getting on the jury!



The process for jury summons and selection varies from place to place. Based on how your particular place pools juries (whether based on voter registration records, drivers license and state identification records, random selection, etc), you may never get called to serve on a jury or you may get called every few years or somewhere in between.

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If you do receive a notice in the mail that you are called to jury duty, this does not mean you have been selected to serve on the jury, but rather are just entering the selection process. You might also be asked to complete a pre-selection step over phone, mail, or online. If you are called into the final selection process for jury duty, you will appear with all of the other people called for jury duty that day. That group is called a **jury pool**. It might be a group of dozens or hundreds of people that day. The court will likely place you all in a big waiting room, and make you watch a

video about jury duty. Some jurors will be sent home after that, and others will be divided up among various courtrooms. If you make it to this stage, you and the other potential jurors will likely be questioned by the judge, prosecutor, and defense attorney. Depending on your answers to the questions, you and other jurors will be either “stricken” (sent home) or will remain on the jury, until only 12 or 6 are left—these 12 or 6 will become the jury. Between one and four “alternate” jurors may be selected as well. This entire process is called **jury selection or voir dire**.

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The trial judge begins voir dire by asking the prospective jurors questions about whether they’re legally able to serve on the jury and be “impartial,” i.e. able to consider the case open-mindedly, without favoring or discriminating against one side or the other. If the judge determines the answer to either of these questions is no for any potential juror, the judge will “strike” those potential jurors. Some potential jurors may also be excused for health or other personal reasons.

In some states, there is a second portion of voir dire, where the remaining potential jurors will be questioned by attorneys on both the prosecution and defense sides.

Questions generally focus on the potential jurors' biases and backgrounds, as well as any pre-existing knowledge they might have about the case. The attorneys can also ask questions designed to uncover characteristics or experiences that might cause potential jurors to favor either the prosecution or the defense.

The prosecutor and the defense each get a limited number of strikes to remove jurors from the jury pool who they think won't side with them. In theory, prosecutors and defense attorneys are not allowed to strike people based on race or gender, but they frequently do (they just have to come up with an alternative justification if asked).⁶ **At the end, the final 6-12 people will remain on the jury and the trial will begin.** While getting stricken from the jury sounds intense, it just means you don't get to be on the jury.

⁶ Batson v. Kentucky, 476 U.S. 79 (1986)



There are two types of challenges, also known as “strikes,” that attorneys use during jury selection to exclude potential jurors. One of these is a **Peremptory challenge**. Peremptory challenges don’t have to be justified or explained— an attorney can use a limited number of peremptory strikes to excuse a jury for any reason other than unlawful discrimination.⁷ Jurors may also be removed **for cause**— i.e. for a reason that the attorney must provide. Some typical reasons a person may be removed “for cause” include statements that indicate bias, prejudice, or prior knowledge of the case.⁸

Some things to keep in mind about jury selection include:

- As a potential juror, you will be sworn in under oath. If you are not truthful, you risk legal consequences for lying under oath.
- You can keep your answers brief, general, and generic. You can still answer questions truthfully without feeling pressured to share your life story or overstate your positions on social/political issues. Often, shorter and simpler responses are best.
- The central question throughout the selection process will be whether you can affirm statements

7 Peremptory Challenge, Legal Information Institute, Accessed June 26, 2022, https://www.law.cornell.edu/wex/peremptory_challenge.

8 Challenge For Cause, Legal Information Institute, Accessed June 26, 2022, https://www.law.cornell.edu/wex/challenge_for_cause.

such as: “I am committed to a fair and just trial” and “I believe I can make an impartial decision.” That means that if you don’t say you agree with these or similar statements, you will be automatically removed from the jury. Keep in mind, the standard for convicting someone of a crime is “beyond a reasonable doubt” which is a high bar and leans against convicting someone.

- It is possible that the prosecution and defense attorney will be researching potential jurors on the internet. They may review social media and general internet presence and try to strike anyone who shows bias against any party, including the prosecution and police.

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If you’re called for grand jury duty, there is no voir dire—or questioning—process, so you will not need to prepare for that the way you would if you were called for a criminal trial jury. More on grand juries below!



Additional Resources

- [*Questions to Consider before Jury Selection*](#) by the Fully Informed Jury Association (FIJA), shorturl.at/bepW1
- [*Know Your Rights as a Juror*](#) webinar by the National Council for Incarcerated and Formerly Incarcerated Women and Girls and FIJA, shorturl.at/fjMSW

I wasn't selected for the jury, is there more I can do?

If you're not selected for the jury, you can still put to good use the information you've gathered during the jury selection process. If you know anyone who is being called for jury duty in a different case or on a different day, before they are asked to appear, share this information with them and prepare them for the specific questions you received during the jury selection process in your jurisdiction, as those questions vary jurisdiction to jurisdiction. If you are not eligible for jury duty, you can still educate people who are.

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It is illegal to talk to someone who is already on a jury about anything related to their jury duty. Be aware that anything you say that could be construed as attempting to influence a particular juror who is already assigned to a particular case could be considered "jury tampering," which is a criminal charge. Courts have ruled time and again that attempting to share general information with prospective jurors (who haven't already been selected to serve on a specific jury in a specific case, also known as "empaneled") is **not** jury tampering.

Serving on the Grand Jury: You can ask questions!

The grand jury's role is different from a trial jury's in that the grand jury determines, at the beginning of a case, whether there is enough evidence to indict a person and proceed with prosecution. The grand jury is instructed to indict if they believe, based only on information the prosecutor provides, that it is more likely than not that a crime occurred and the person accused is responsible for it. This is called "probable cause" and is a very low burden of proof. If the grand jury refuses to indict, the case is dismissed. Unlike a criminal trial jury which requires a unanimous decision, a grand jury can (unfortunately) indict someone with only a majority of jurors on board with indictment. Also unlike a trial jury, most grand jurors will have the chance to make decisions on multiple cases right at the beginning and can thus potentially prevent many people from spending months or years of their life having to fight the charges.

Besides voting against indictment, this section describes other abolitionist tools grand jurors can also use during the grand jury to challenge the prosecution and hopefully prevent future conviction and incarceration.



There's a common saying that it's possible to "indict a ham sandwich" and the [skewed grand jury process](#) makes it clear why. Unlike a trial where the defense theoretically has the right to question the prosecution's witnesses and evidence and to present their own witnesses and evidence, during the grand jury proceedings, only the prosecutor presents their side of the case. The prosecution is in complete control of the process. Prosecutors ask their witnesses only the questions that support the prosecutor's case, and present only their strongest evidence against the accused person.

Prosecutors have control over

1. What charges to present;
 2. What legal guidance to offer to the grand jurors about how the grand jury should make its decision;
 3. Which witnesses to call; and
 4. Whether to go forward with the grand jury in the first place.
-

Prosecutors want an indictment, and grand jurors usually agree. Also, grand juries are instructed to indict if they find “probable cause” to continue bringing charges against the person, which is a lower burden for prosecutors to prove than the “reasonable doubt” standard at trial.

Grand jury proceedings are also confidential, happen entirely in secret, and not open to the public or media, like criminal trials are.

Not even the person accused of a crime, their family members and friends, nor their defense team can be present, except the person accused of the crime can be present to testify (but only during the time they are testifying). It is very rare for an accused person to testify since their lawyer cannot ask questions and is not able to be present to hear what other witnesses say. It is a one-sided proceeding.

This is where grand jurors can play an integral role in the absence of defense counsel. In a grand jury proceeding, grand jurors are allowed to question the prosecution’s witnesses and evidence. As a grand juror, **you can ask as many questions as you want!** You can be curious and skeptical of the prosecution’s case and

you can encourage your fellow jurors to do the same. Jurors can use their questions to force the prosecutor and their witnesses to reveal the weaker points in their case. In this way, both the questions you ask, and the prosecution’s answers, can sway the room of grand jurors in favor of non-indictment. The questions grand jurors ask are also recorded in the transcript of the proceedings, which can help the defense down the line, even if the case does get indicted.

The questions you might ask for each case will be different and specific to the individual case. **But as you formulate your questions as a grand juror, you can think about what could be asked that might poke holes in the prosecution’s story.** Often prosecutor’s star witnesses are police officers. **Are there questions you can ask to see if they followed procedure correctly? For example: Why did you do X? How did you do X specifically—what were the steps to the process? And then what did you do? Why didn’t you do Y? What made you think X at the time? Why did you rule out that it wasn’t Y happening instead? You can also ask questions to demand more information from the prosecution to flesh out their story: Who else was present? What were they doing? Why did they do X? Why didn’t they do Y?**

If you start to ask questions related to police violence in the case or violations of the accused person's rights, the prosecutor might tell you that will be dealt with later to try to get you to stop. Don't be fooled. If the prosecutor tries to avoid answering these questions, you can respond by saying that answers will help you determine whether or not there is probable cause for a crime.

There's another reason for jurors to ask as many questions as possible: to lock the prosecutor and their witnesses into their story.

While the defense has no right to be present at the grand jury proceedings, the defense will often request the transcript from the grand jury proceedings during plea negotiations or before the trial.

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Once a witness testifies to something in a grand jury proceeding, they can't change their testimony at trial (without looking like a liar, which is also helpful for the defense). The more a prosecution's witness is locked into testimony early at grand jury proceedings, the more time it also gives the defense to prepare to poke holes in it (as opposed to not knowing what to expect until the witness starts testifying at trial). If the defense is negotiating a plea, questions from grand jurors suggest that a trial jury might have doubts about the prosecutor's case, providing leverage for the defense in an otherwise one-sided negotiation.

What is Jury Nullification?

Refuse to Convict!

Jury nullification is when a jury returns a “Not Guilty” verdict at a trial, regardless of what’s presented at trial. You can vote “not guilty” even if the “evidence” presented at trial could support a conviction beyond a reasonable doubt. In this way, any of us who are able to get on a jury have the power to use jury nullification to prevent people from being convicted!

Once a jury returns a Not Guilty verdict, it is final and the case cannot be re-tried and cannot be overturned.⁹ Jury deliberations are secret. This means no one—the judge, the prosecutor, or any other state actor—can demand the jury explain or defend their decision. To the extent jurors’ opinions are in the news, it’s because they chose to speak after the fact.

If jurors are having trouble coming to a unanimous agreement, all the judge can do is ask that they keep deliberating. Jurors have been engaging in jury nullification for as long as there have been juries. Calling in part on the concept of “higher law,” some

⁹ On the other hand, when a jury convicts someone, that verdict is not necessarily final. Although it’s hard to win an appeal of a jury trial conviction, people who are convicted at trial can try to challenge that verdict and get it overturned for a variety of reasons.

jurors refused to convict people under the Fugitive Slave Acts, as well as in cases where people were tried for freeing Black people being held captive in jail.¹⁰ Jurors have nullified in cases where people were charged with resisting the Vietnam War in very public, historic trials.¹¹ But it is not just for high-profile cases: jurors have also nullified in every type of case, with every type of charge.

In his article, “Racially Based Jury Nullification,” law professor Paul Butler highlights examples of Black jurors engaging in nullification in order to promote racial justice in the face of anti-Black, racist courts.¹²

Butler asks other Black people to consider jury nullification as a strategy against anti-Black laws. Butler notes the examples of the prosecution of former-DC mayor Marion Barry, where a majority Black jury acquitted Barry of all but one of the charges against him, and during which many Black community members and leaders spoke out against the prosecution as a racist attack.¹³ While that case was high-profile,

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10 Barkan, Steven E, “Jury Nullification in Political Trials,” *Social Problems*, Oct. 1983, [shorturl.at/hpFUZ](https://www.shorturl.at/hpFUZ)

11 Butler, Paul, “Racially Based Jury Nullification,” *Yale Law Journal*, Dec. 1995, [shorturl.at/agjT9](https://www.shorturl.at/agjT9); Barkan, Steven E, “Jury Nullification in Political Trials,” *Social Problems*, Oct. 1983, [shorturl.at/gly34](https://www.shorturl.at/gly34)

12 Butler, Paul, “Racially Based Jury Nullification,” *Yale Law Journal*, Dec. 1995, [shorturl.at/CGOU3](https://www.shorturl.at/CGOU3).

13 see *Id.*, 681-84.

jurors have also refused to convict people in cases that never make the headlines. Some jurors have refused to convict in drug possession or sale cases in protest of the War on Drugs. Because jury deliberations happen in secret and jurors don’t usually advertise when they have nullified, there are many more instances of jury nullification than we’ll ever know about.

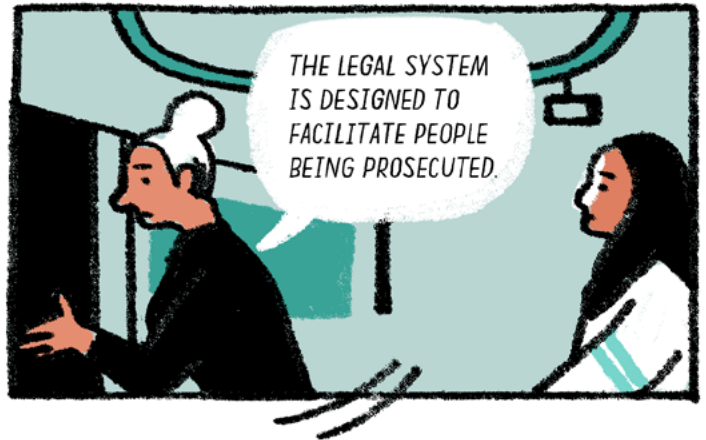
If you haven’t heard of jury nullification you aren’t alone. Jury nullification is often referred to as a “silent” power—judges and lawyers in the courtroom know jurors have it, but never say so out loud. An 1895 U.S. Supreme Court case says that jurors do not have the right to know about their power of nullification.¹⁴ Many courts have ruled that defense lawyers and defendants are not allowed to tell their jury about jury nullification.¹⁵

A federal appeals court ruled that judges can lie to jurors by telling them “There is no such thing as valid jury nullification,” and that judges are allowed to scare jurors by admonishing them that “You would violate your oath and the law if you willfully brought in a verdict contrary to the law given you in this case.”¹⁶

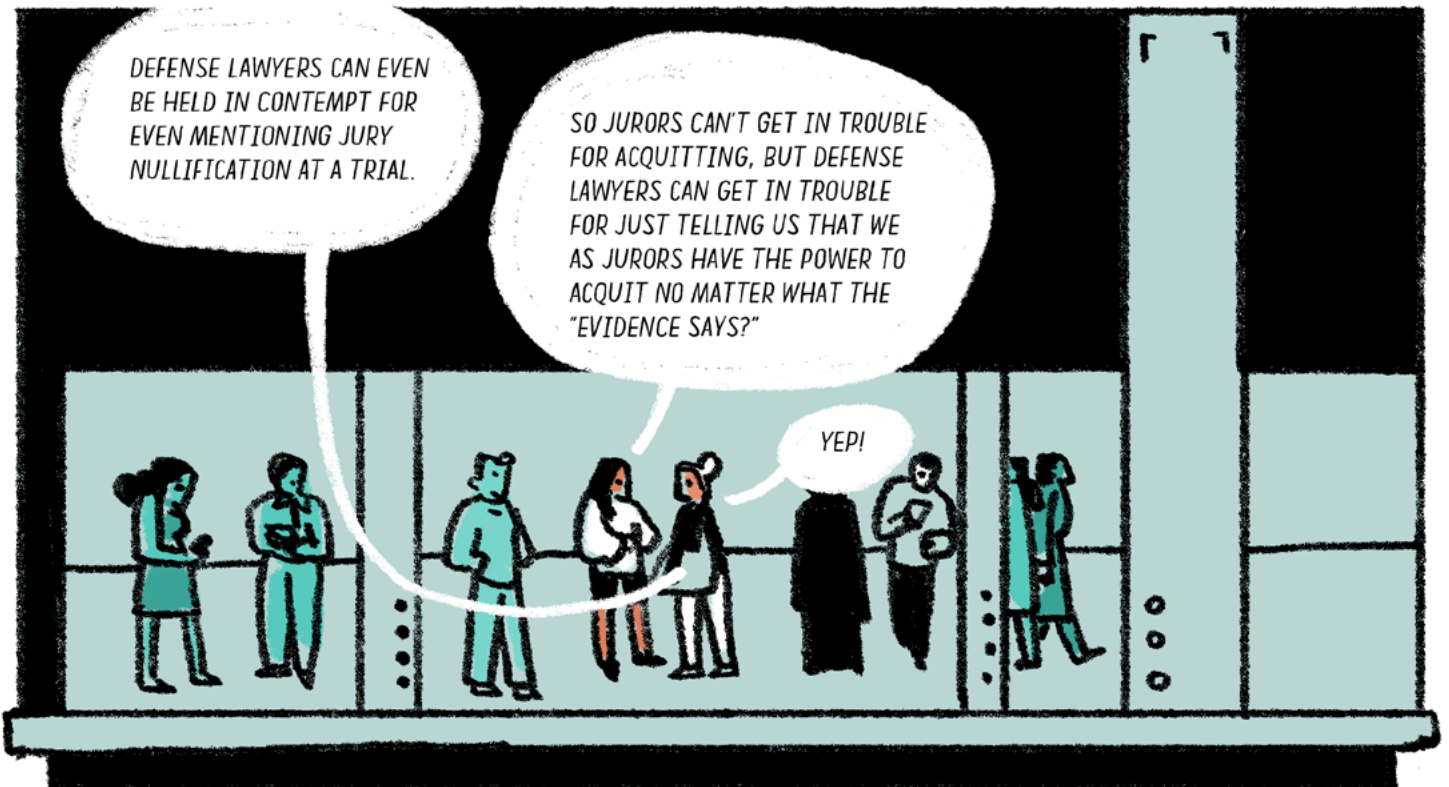
¹⁴ *Sparf v. United States*, 156 U.S. 51 (1985).

¹⁵ *United States v. Reese*, 933 F. Supp. 2d 579 (S.D.N.Y. 2013).

¹⁶ *U.S. v. Krzyske*, 836 F.2d 1013 (6th Cir. 1988); Paul, Jordan, “How Courts Robbed Juries of a Powerful Tool for Doing Justice,” *Balls and Strikes*, Oct. 7, 2021, shorturl.at/aii48.



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Jury Nullification in Practice



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In order to even be able to engage in jury nullification, you first need to be summoned for jury duty and then be selected to serve on the jury. If you officially make it onto a jury, you may wonder how an individual person can actually make a difference.

The criminal legal system is already overwhelmingly biased toward punishment. Being selected as a juror is an opportunity to provide a critical, alternative viewpoint in a system that fast-tracks harsh and racist punishment.



Step 1: You always have the right to say “not guilty.”

After the prosecution and defense give their closing arguments and the judge reads the jurors the “jury instructions,” the jury will be sent back to the jury room to deliberate on the case.

While the criminal legal system is designed to intimidate people, it is your legal right to say “not guilty” no matter what, for any reason!

At various points during trial, the judge and the prosecutor will likely say jurors are required to consider the evidence and say “guilty” if the evidence suggests that the person is guilty. At the end of trial, the judge will instruct you again when they read the jury instructions that you “must” render a verdict of guilty if you find “beyond a reasonable doubt” that the person on trial did the thing they’re being accused of. But that’s not true!

As a juror, you can say “not guilty” for whatever reason you want. You will not be asked to justify this vote to the court. Your decision is your own—you can always vote “not guilty.”

Other jurors may also get frustrated and question you about your vote. Some of them may want to push for a conviction because they simply don’t like the person on trial, and others may want to speed the process along so they can go back to work. Although it may be strategic to frame your “not guilty” decision during deliberations in ways that will not rub other jurors the wrong way, you should not be pressured away from your own “not guilty” vote.



Step 2: Collective decision making and a “not guilty” vote.

Because talking about jury nullification explicitly with other jurors risks you getting removed from the jury, the best case scenario is that you (and other sympathetic jurors) convince all the jurors who are serving with you that there is not enough evidence to convict the person “beyond a reasonable doubt.”

The composition of your jury group, the weight of the evidence against the person who is being prosecuted, and your sense of the political leanings of the jurors will make this task more or less difficult (although it will likely always be a difficult task).

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Discussing jury nullification explicitly with your fellow jurors can get you removed from the jury. While jurors have the power to nullify, courts have decided they can remove people from juries, at any point of the process, if they publicly consider or discuss their option to conscientiously acquit. Instead, you’ll have to get creative to convince others to join you in saying “not guilty!”

When jurors have done this successfully, they have been keenly aware of the social dynamics of the jury. While one group of jurors may be receptive to broader critiques of police or prosecutors, because of the way police and prosecutors are glorified in the media, typical jurors probably won’t be very receptive to those arguments.

Depending on the politics of your fellow jurors, bringing explicitly abolitionist or anti-police critiques into the jury room could make your fellow jurors ignore you and make it even harder for you to convince them to vote “not guilty.”

If any of your fellow jurors are particularly pro-police or pro-legal system, they might even try to “report” you to the judge. This could result in you getting removed from the jury, or could lead to a mistrial.

STORIES OF JURY NULLIFICATION

“I have been on juries pretty often [over] the last 10 years. I’m in Saint Louis and especially after the Ferguson uprising, I’ve tried to get [my fellow jurors] to reconsider their own bias and how we often insert our own experience erroneously especially in regards to race and crime. **I find gently asking questions about assumptions folks make to be pretty useful.** Asking folks if their goal is punishment, protection for the vulnerable or rehabilitation can allow me to slide in word tracks about abolition without people realizing what I am doing. And, of course, being prepared to be the hold out and explaining why I am, gently and in a granular way, can get others to join me.”

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Jurors who have successfully nullified often take it slow. They start by learning about the biases and political positions of others in the group. They craft their approach according to what resonates with the group. Those jurors have shared their thoughts and opinions from the beginning of deliberations, making an impression early on and helping to break the ice.

Simply showing up and saying “not guilty” without engaging with the other jurors will likely annoy or turn off other jurors. By building trust, those jurors have avoided alienating other jurors and avoided other jurors from complaining about their “obstinance” to the judge.

STORIES OF JURY NULLIFICATION

“I served on a 6-person jury in municipal court. The case involved a man accused of assaulting a woman who was an unrelated household member. The prosecutor was unable to prove the charge beyond a reasonable doubt due to inconsistencies in the evidence and testimony. During the jury deliberation, five of us quickly agreed that the verdict should be innocent, but one juror disagreed. This juror thought that an assault actually happened, even though the evidence and testimony was contradictory, and that the woman needed some kind of justice or closure for the situation. Talking to this juror, I agreed that the woman appeared to have experienced some physical and emotional harms, but **I also argued that a guilty verdict—and the criminal justice system in general—would not heal her harms in any meaningful way, or provide the support she might need.** This helped convince the juror to agree to a unanimous innocent verdict.”

Tips for Discussing a Not Guilty Vote in Collective Deliberations

Volunteer to be the Jury Foreperson

At the beginning of deliberations, the jury will usually be asked to select a “foreperson” who is the person who speaks on behalf of the jury to the judge and the rest of the courtroom. If you can, volunteer or get yourself chosen as foreperson. Other jurors will often defer to the foreperson in deliberations.

STORIES OF JURY NULLIFICATION

“I was a jury foreperson for a murder trial ... We found him not guilty. I was the only not guilty vote when we did our first vote ... **One thing I kept saying throughout our deliberations, ‘A not guilty verdict is not the same as declaring a person innocent.’** This is when the votes slowly started to change. Toward the end of the 3 days it appeared we may have a mistrial. A few jurors wanted that. I would reply that our duty was to come to a verdict and it would be a failure to not do that.”

Using Evidence and Information Presented at Trial to Make the Case for “Not Guilty” to your Fellow Jurors

The best tactic to convince other jurors to say “not guilty” is to use the evidence from trial to make your argument that the evidence supports a “not guilty” verdict. To do this, you’ll need to pay close attention during the trial!

STORIES OF JURY NULLIFICATION

“The case was about alleged drunk driving where the defendant had crashed the car into the tree and the police came and made him do drunk driving tests such as walking in a straight line, etc.; but did not breathalyze him. When we met as jurors, people were mostly airing on the side of acquittal to begin with because there was no proof of being drunk and they were all frustrated the officer did not do the one thing that would confirm a drunk driver (breathalyze). Since the majority of us felt that way, it was easier to resist the pressure to convict and it felt great to share that we acquitted him with the court. **I think relying on the approach that again cops have all the funding, and they do not keep us safe, was helpful in this conversation with other jurors.**”

One way to do this is to imagine you're the accused person's defense lawyer, and point out all the flaws and weaknesses in the prosecutor's case, and the strengths of the defense's case. The defense attorney will do this during trial, so pay attention. **Did any of the prosecutor's witnesses seem like they would have reason to lie? Were their stories inconsistent with each other's? Did the cops forget to document evidence when they took it after the person's arrest? Does the video evidence fail to record important moments in the sequence of the trial? Is the video obscured?** This isn't something you can prepare for ahead of the trial because every case is different—it's something you'll have to come up with while you're listening to the trial. If the person has a decent defense lawyer, that defense lawyer will be making good arguments that you can use in the jury room to convince your fellow jurors.

If any of your fellow jurors are expressing doubt about something (even if it wasn't mentioned by the defense attorney) that is something that can be used in collective discussions. Thinking creatively, conversations don't have to be confined to the defense attorney's arguments. Sometimes, certain jurors like to think of themselves as seeing something that the lawyers didn't see. Was there something that seemed a little off about anything that happened

during trial that you noticed? Maybe something in a photo or a witness's testimony that seemed strange? Can you use that to convince the other jurors to say "not guilty"?

STORIES OF JURY NULLIFICATION

"In my experience as a juror going into the process hoping to nullify the case, I was overall pretty "lucky" with my circumstances. The person on trial was being accused of unlawful possession of a weapon, a non-violent crime that most of my fellow jurors did not necessarily view in a super serious way. Additionally, the primary evidence for the case was the testimony of two police officers who did an incredibly bad job of securing the jury's trust or presenting a consistent/credible story. Lastly, as the trial/deliberations went on it became pretty clear that I was not the only juror hoping to nullify regardless of evidence. **My strategy was focused on sowing doubt in the police's testimony and pointing out different holes in their story.** There was definitely push back, but by focusing on the people who seemed least convinced and echoing their doubts back to them we eventually were able to convince every juror. Ultimately, it was incredibly satisfying to know that we had deliberately intervened in ensuring that a member of our community stayed out of jail."

Doubt and a Vote for “Not Guilty”

A lot of jurors don't understand just how high a standard for conviction “beyond a reasonable doubt” is and that it is the prosecutor's burden to prove the guilt of the person on trial beyond this standard. Jurors who have successfully nullified have reminded their fellow jurors that “beyond a reasonable doubt” doesn't mean “I think he did it” or “I'm almost sure he did it.” **Instead, if jurors have any doubt at all, even the slightest inkling, “beyond a reasonable doubt” requires that they *must* acquit and say “not guilty.”**

The chart on the next page helps visualize what proof “beyond a reasonable doubt” means. As a person on the jury, you can share this definition and point out the doubts in the prosecution's case. Even someone who strongly believes the person is guilty, if they still have some doubts, that means they must say “not guilty.”

The prosecution, and the prosecution alone, has the burden to prove the charges beyond a reasonable doubt. That means that the defense has no obligation to make their own case or put on witnesses or have evidence. The person being charged has no obligation to testify, and many people who have been accused of charges choose not to testify and that means nothing about their “guilt” or “innocence.”

BURDEN OF PROOF

GUILTY

GUILTY BEYOND A REASONABLE DOUBT

GUILT HIGHLY LIKELY

GUILT LIKELY

PROBABLY LIKELY

PROBABLY GUILTY

SUSPECTED

PERHAPS

MAY NOT BE

POSSIBLY NOT

UNLIKELY

PROBABLY NOT

LESS THAN LIKELY

HIGHLY UNLIKELY

PROVEN NOT GUILTY

NOT GUILTY

STORIES OF JURY NULLIFICATION

“I was part of a jury that found someone not guilty for four charges related to people with felonies unable to be in possession of weapons. I argued that while it was admittedly unlikely [that the person being prosecuted] found such a large gun randomly in a trashcan, the prosecutor did very little to create another alternative for how he came into possession of the gun. I stated that even if we didn’t necessarily believe his story, it was the prosecutor’s job to provide evidence in support of her argument and debunk his story. **While in deliberation, I leaned very heavily on reasonable doubt.** I ultimately successfully argued that it was the prosecutor’s responsibility to prove beyond a reasonable doubt that he had the gun prior to leaving the gas station which would’ve contradicted his story. She didn’t do that, so we didn’t have evidence beyond a reasonable doubt, and therefore we couldn’t ethically convict him. And it worked! [W]hat helped me most was arguing reasonable doubt.”

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If the defense does decide to put on a case, the prosecution still has the burden to prove their case beyond a reasonable doubt. **Often when the defense decides to put on a case, jurors will mistakenly compare the prosecutor’s case and the defense’s case and decide which one they think is more believable. That is NOT correct, and you can remind your fellow jurors of that.** Also, if the defense calls its own

witnesses, the prosecution will likely try to impeach the defense’s witnesses by questioning them about prior convictions—don’t let your fellow jurors fall for that. Just because someone has a conviction doesn’t mean they can’t be trusted. If it comes up in deliberations, you can argue that prior convictions are not a mark of unreliability.

Using the Jury Instructions You Were Given

Before you and your fellow jurors begin deliberating, you will be provided specific jury instructions from the judge that correspond to the laws of your state. The instructions are long and can be boring, but the jury instructions can be a source you can look to help you make your arguments to the other jurors. **For example, depending on the judge, the jury instructions might include a helpful description of what “reasonable doubt” means.** Or they might include jury instructions about witness “reliability” or “credibility” that can be referenced to express your doubt about the prosecution’s witnesses, for example.

However, you should consider how jury instructions may also limit your potential arguments. For example, many states forbid explicitly considering the potential punishment a person faces in a decision regarding whether or not to convict a person, and the overwhelming majority of states require jurors to “follow the law” in evaluating the evidence of whether or not to convict a person.



Step 3: No matter what others vote, you can always say “not guilty” yourself.

Importantly, while you should work to try to get the rest of the jury to all vote “not guilty,” even getting just some of the jurors (including yourself) to say “not guilty” is a far better outcome than a guilty verdict and conviction.

If the jury does not unanimously agree, known as a hung jury, the judge will likely first instruct the jurors to continue deliberations to see if they can come to a unanimous verdict. If the jurors are again unable to agree, the judge may declare a mistrial, meaning that the trial was not completed. In the event of a mistrial, the prosecution may re-try the case against the person who they are prosecuting, but this effectively re-starts the trial process and will take a significant amount of time and resources. It is not guaranteed that the prosecution will re-prosecute a case against someone after a mistrial is declared.

No matter the scenario, you have the right to stay committed to your “not guilty” position and convince others of your position.

Your fellow jurors might argue with you about it. They might be cranky and desperate to get home after a long trial. They might even downright bully you. You have just as much ability to say you believe the person is not guilty as before, and you don’t have to be swayed by anyone’s arguments. You have a commitment to the person on trial, to yourself, and to your community to adhere to your beliefs and your own moral compass.

STORIES OF JURY NULLIFICATION

“I am currently an abolitionist, but at the time of my jury duty I did not know of the position and my politics weren’t very developed (30ish years ago). I have always been against the police and their tactics. **I rallied my jury from 11:1 for conviction to unanimous not guilty in about an hour.** I think they got tired of listening to me. Not one person cared enough to argue.”



Step 4: Avoid being excused from the jury.

While voir dire is the primary stage during which jurors are eliminated from jury service, most U.S. courts allow for jurors to be dismissed during proceedings in the event of a “good cause” reason. That means judges have the power to remove someone from the jury when the trial has already started. **The primary reasons for being excused include a failure to follow court instructions, and an inability or unwillingness to deliberate impartially.**

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Judges and pro-prosecution lawyers have been working to limit jury actions that interfere with the overwhelming pressure to convict, including by forbidding discussion of nullification and by questioning individual jurors’ motives when jurors express views that are skeptical of law enforcement, even during the course of deliberations.

Jury deliberations are supposed to be secret and protected from scrutiny from the judge or any other person who may exert influence over the jurors’ views. However, jurors can communicate via notes to the

judge in regard to their deliberations. It is during these exchanges that judges may decide to further question or dismiss jurors found to be engaged in misconduct or otherwise unwilling to deliberate impartially.

Common reasons jurors may be excused from jury service include:

Failure to follow court instructions

- The judge will provide instructions both regarding the role of the jury itself and regarding other restrictions on behavior while in the courthouse. It is vital that you do not appear to be violating any of these instructions. **If you are found in violation of court instructions, other jurors can report you to the judge and the judge can excuse you from jury service for cause.** Some common court instructions that jurors may fail to follow include using technology that was banned from the court, communicating with people outside the jury about the case, reading about the case in the media, or falling asleep during some aspect of the trial or deliberations.

“Inability” or “unwillingness to deliberate”

- In some cases jurors are excused for **medical or other personal issues** that come up during trial or deliberations which make them unable to serve.
- More troublingly, jurors have been excused for “unwillingness to deliberate” **when they indicate**

they've made up their mind about the case at an early stage in deliberations, or indicate they don't believe the prosecution's story. Other jurors have written to the judges in these cases, reporting the jurors who express disbelief in the prosecutors' positions. While it's illegal for a juror to be removed based on their evaluation of the evidence, judges justify their decisions by saying that the jurors were "biased" or "unwilling" to examine evidence. For this reason, it is especially important that you make sure to stay engaged in the deliberations throughout the process, even if they begin to drag on longer. It is also important to avoid broad statements that point to general distrust in police or the prosecution—instead, comments on these issues should be grounded in distrust of the evidence provided by the police and prosecution.

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Contradicting your voir dire answers

- **You should be careful not to explicitly contradict anything you told the judge or lawyers during voir dire.** Jurors have been removed and threatened with criminal prosecution for misrepresenting themselves during voir dire. This is why it's key to be cautious during voir dire about sharing your views and to be sure to speak truthfully and generally.

TL;DR: Avoiding getting excused from a jury



- Avoid broad or specific statements about personal beliefs in relation to the case;
- Avoid any action that could be viewed by the judge or other jurors as disrespectful;
- Do not discuss nullification;
- Focus on the evidence in the case and why it is insufficient;
- Agree to deliberate.



Step 5: After the Verdict, Think Carefully Before Speaking Publicly About Your Decision

Talking to the media

While a judge will not question the reasons for your decision to vote to acquit, the media and others may attempt to contact you about your role in deliberations and your decision. **If you have served on a grand jury, it is technically illegal to speak about the specific details of the cases you reviewed. If you served on a trial jury, then it is up to you whether to speak about your experience after the trial is over.** If there was a full acquittal (!!!), then you may want to share your experience on the jury with others, to help spread the word about any injustices you witnessed.

However, there are reasons to be careful. If the case has not ended in a full acquittal, then it is wise to avoid speaking publicly. If the prosecution is able to establish any type of juror impropriety, they may be able to get the judge to rule that there was a mistrial.

In addition, statements to the media that create any perception that you lied to the court during jury selection, that you nullified, or that you made up your mind before hearing the case, could lead to threats of or actual legal action against you.

Talking to the defense attorney

If the case ends in any kind of guilty verdict or in a mistrial, defense attorneys may try to speak with you about the case. If you are comfortable, you may be able to provide them useful information about how they should change their strategy for future trials or appeals. If you feel that something improper happened inside the jury room that led to a guilty verdict, then you should tell the judge and/or the defense counsel.

Jury Nullification in the Grand Jury Context

Unlike a criminal jury which requires unanimity of decision, a grand jury can (unfortunately) indict someone with only a majority of jurors on board with indictment. You can reference the tips above to make the case to fellow grand jurors, even if just a majority, to not vote for the indictment. **Because you are allowed to ask questions of the prosecution and the prosecution's witnesses during the grand jury proceedings, asking as many questions as possible is, in and of itself, a useful way to expose holes in the prosecution's case and cast doubt for fellow jurors.**

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As a grand juror, you may hear many different cases. So even if you are unsuccessful at convincing your fellow jurors to decline to indict the first time, don't give up, and continue to try to build relationships with your fellow jurors so that your views may have more sway over them in later cases that come in front of your grand jury. **And, if you can reveal to jurors through your questions (and the prosecution answers) just how stacked the deck is, the grand jurors might start to trust the prosecution less over time.**

Remember, though, unlike a criminal trial jury, it is technically illegal to speak about the details of the specific cases you reviewed while on a grand jury, even after your jury duty is complete.

Jurors Can Just Say “Not Guilty”

If there is one thing you remember from this toolkit: saying “Not Guilty” can help keep people home and free from prosecution, incarceration, and surveillance. For people who are committed to prison abolition and decarceration, participating as a juror and saying “Not Guilty” is a concrete, practical way to put your values into practice and prevent convictions and incarceration. We hope this toolkit provides you with the knowledge and practical advice that can help empower you to engage in nullification if you are called for jury duty and selected to be on a jury.

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STORIES OF JURY NULLIFICATION

“I was on a jury for an attempted murder trial, they were also trying to add gang-related to the crime. Four young men were being tried together. I was the only hold out. For six weeks. The other jurors were furious with me daily, openly hostile, because they wanted to go home. I figured the ... young men wanted to go home, too. After the trial, I looked up recommended sentencing for their charges, with the gang related additions they would’ve spent 25 years in prison. All of them. It was worth it to face the hostility for six weeks.”

